

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARK P. LEDOUX, <u>et al.</u>	:	CIVIL ACTION
	:	
v.	:	
	:	
FORD MOTOR COMPANY	:	NO. 96-6981

MEMORANDUM AND ORDER

BECHTLE, J.

MARCH 10, 1998

Presently before the court is plaintiffs Mark and Irene Ledoux's ("Plaintiffs") petition for attorney's fees and costs and defendant Ford Motor Company's ("Defendant") opposition thereto. For the reasons set forth below, the motion will be granted in part and denied in part.

I. BACKGROUND

Plaintiffs brought this civil action against Defendant seeking relief under, inter alia, the New Jersey Automobile Lemon Law, N.J.S.A. 56:12-29, et seq. ("Lemon Law").¹ In November, 1995, Plaintiffs purchased a 1996 Mercury Villager manufactured by Defendant. On October 15, 1996, Plaintiffs filed a Complaint commencing this action. On February 6, 1997, this matter proceeded to arbitration pursuant to Local Rule 53.2. The

1. This court has diversity jurisdiction pursuant to 28 U.S.C. § 1332 because the parties are citizens of different states and the amount in controversy exceeds \$50,000.00. The court notes that the complaint was filed October 15, 1996, prior to the increase in the required amount in controversy for diversity jurisdiction.

arbitrators awarded Plaintiffs a full repurchase of their vehicle under the Lemon Law. Defendant then filed a demand for a trial de novo. Prior to trial, the parties settled the case. The settlement agreement provided that Defendant would exchange Plaintiffs' defective vehicle for a replacement Ford vehicle. (Def.'s Mem. at 1.) The agreement also provided that Plaintiffs were responsible for any price difference between the vehicles, as well as any related sales tax. Id. at 1-2. However, the parties failed to reach an agreement as to attorney's fees and costs. On July 23, 1997, Plaintiffs filed a petition for attorney's fees and costs incurred. Plaintiffs seek \$5,340.00 in fees and \$206.25 in costs.

The motion will be granted in part and denied in part.

II. DISCUSSION

Plaintiffs filed a petition for the court to grant attorney's fees and costs pursuant to the Lemon Law. That statute states: "[i]n any action by a consumer against a manufacturer brought in Superior Court or in the division pursuant to the provisions of this act, a prevailing consumer shall be awarded reasonable attorney's fees, fees for expert witnesses and costs." N.J.S.A. § 56:12-42. The petitioner has the burden of showing that the fees and costs requested are reasonable by producing evidence that supports the hours and costs claimed. Rode v. Dellarciprete, 892 F.2d 1177, 1183 (3rd Cir. 1990); see also Hensley v. Eckerhart, 461 U.S. 424, 433

(1983). The opposing party then has the burden of providing sufficient basis to contest the reasonableness of the fees. The court then has discretion to adjust the fee award for any reason put forth by the opposing party. Rode, 892 F.2d at 1183.

A. Fees

In determining appropriate attorney's fees, the court must first determine the lodestar. The lodestar is a computation of a reasonable hourly rate multiplied by the number of hours the court determines the attorney reasonably worked. Hensley, 461 U.S. at 433. The court may then adjust the lodestar as the court deems appropriate. Id.

1. Reasonable Hourly Rate

The Plaintiffs argue that they should recover \$150.00 per hour for their attorney's services as that is the prevailing market rate for Lemon Law cases in this geographic area. Defendant argues that the court should apply a lower rate because the facts of the case arose in New Jersey and under the laws of that state. Defendant relies on a recent decision in the District Court for the District of New Jersey in which the court held \$90.00 was a reasonable rate for the South Jersey area. Sullivan v. Chrysler Motor Corp., No. 94-5016, 1997 WL 94236, *3 (D.N.J. Feb. 28, 1997)(reducing requested \$150.00 rate to \$90.00 rate). In light of the specific circumstances set forth in this case and after review of relevant case law under both

Pennsylvania and New Jersey Lemon Law cases, the court will apply a rate of \$125.00 per hour. See, e.g., Pugliese v. Chrysler Corp., No. 95-2771, 1998 WL 34587, *2 (E.D. Pa. Jan. 29, 1998)(applying \$125.00 rate under Pennsylvania Lemon Law).

2. Reasonable Hours Worked

Plaintiffs have submitted a Bill of Fees and Costs with their petition claiming 35.6 hours billed by their counsel. Defendant objects to many of the entries for a variety of reasons, including the lumping together of vague activities, excessive time and charges for services prior to filing the complaint. Defendant makes fifteen objections in all. The court finds that some of these objections have merit and will reduce the fees as follows.

The court will disallow .8 hours that were billed prior to the retainer agreement because it is outside the scope of counsel's representation of Plaintiffs. The court will reduce the amount of time billed for drafting the Complaint from 1.0 hours to .5 hours in light of the "form" nature of the Complaint. The court will disallow the .5 hours billed for the filing of the Complaint as it is excessive and vague in light of the fact that other complaints were filed at the same time, according to the description of the activity. The court will reduce the amount billed for drafting the arbitration memorandum from 1.2 hours to .3 hours, again in light of the form nature of the memorandum. The court notes that Defendant has attached as exhibits to its

response copies of almost identical memoranda submitted by Plaintiffs' counsel in other Lemon Law cases and the court finds those exhibits to be persuasive evidence of over-billing for this task. (Def.'s Mem. Ex. A, B-1 & B-2.) Plaintiffs' counsel also lumps together phone calls made on several different days as one charge. Most notable is the vague claim that .3 hours were spent on phone calls between February 26 and June 4, 1997, discussing settlement. The court will disallow as vague those claims which lump together calls made over the course of several days, including the .3 hours described above, .7 hours spent between June 10 and June 13, 1.0 hours spent between June 16 and June 20, and .8 hours spent between June 23 and the "present." Finally, the court will reduce the time billed for drafting the fee petition and supporting memorandum of law from 2.0 to 1.0 hours in light of the form nature of the motion. In conclusion, the court will reduce the total hours from 35.6 hours to 29.1 hours.

3. Calculations to the Lodestar

As explained above, the lodestar calculation is 29.1 hours at a rate of \$125.00 per hour, for a lodestar of \$3,637.50. The court will not adjust the lodestar upward as requested by Plaintiffs because the hourly rate applied adequately reflects the skills, risks and delays associated with this litigation. The court will not adjust the lodestar downward as requested by Defendant because Plaintiffs' counsel was successful in obtaining

a new auto for their client, which is tantamount to obtaining a full repurchase of the vehicle under the Lemon Law.

B. Costs

In addition to the lodestar, the court must determine any costs to which the Plaintiffs' attorney is entitled. The Bill of Fees and Costs submitted by Plaintiffs' counsel includes \$120.00 in filing costs and \$86.25 in copying costs. Defendant does not contest the filing fee and so the court will allow that expense. However, Defendant objects to the costs of copying in that the rate of \$0.25 per copy is excessive and there is no proof of the number of copies made. The court notes that other courts have approved copying costs of \$0.25 per copy. See, e.g., Anderson v. Ford Motor Co., No. 96-913, 1997 WL 158133, *2 (E.D. Pa. April 1, 1997)(addressing costs under Pennsylvania Lemon Law). However, Plaintiffs' counsel has not provided evidence that these copies were actually made or whether they were related to this action. Thus, the court will disallow the copying costs and only allow the \$120.00 filing costs.

C. Summary

The court has calculated the lodestar as \$3,637.50. The court will not adjust the lodestar amount. Additionally, the court will grant costs in the amount of \$120.00. Plaintiffs' counsel is entitled to a total sum of \$3,757.50 for attorney's fees and costs.

III. CONCLUSION

For the foregoing reasons, the motion will be granted in part and denied in part.

An appropriate Order follows.

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FORD MOTOR COMPANY	:	NO. 96-6981

ORDER

AND NOW, TO WIT, this 10th day of March, 1997, upon consideration of plaintiffs' Mark and Irene Ledoux's petition for attorney's fees and costs and defendant Ford Motor Company's response thereto, IT IS ORDERED that said motion is GRANTED IN PART and DENIED IN PART.

Ford Motor Company shall remit a check in the name of Power & Gerber, P.C., within thirty (30) days from the date of this Order in the amount of \$3,757.50, in full satisfaction of attorney's fees and costs.

LOUIS C. BECHTLE, J.